

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John W. Richardson as Receiver for the Alisal Water Corporation to sell and transfer the water systems in Monterey County to Pajaro Sunny Mesa Community Service District.

Application 05-03-003
(Filed March 4, 2005)

Application of JOHN W. RICHARDSON (ALISAL WATER CORPORATION), to sell and transfer the Moss Landing water system in Monterey County to Pajaro Sunny Mesa Community Service District.

Application 05-03-006
(Filed March 4, 2005)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
MODIFIED SCOPING RULING GRANTING IN PART PETITION TO SET
ASIDE SUBMISSION AND SETTING EVIDENTIARY HEARING**

This ruling grants, in part, Alisal Water Company's (Alisal) petition to set aside submission of the record, and sets evidentiary hearing to take additional evidence of alleged charges incurred by the small water systems after the Receiver delegated responsibility for their operations to Pajaro Sunny Mesa Community Services District (PSMCSD). We modify the July 18, 2005, scoping ruling accordingly.

1. Procedural Background

The Administrative Law Judge's (ALJ) draft decision, mailed December 19, 2005, conditions the transfers sought in these applications on, among other things, the Receiver's reimbursement to Alisal for property taxes and telephone charges allegedly incurred by the small water systems and paid by Alisal, and

Department of Health Services (DHS) surcharge collected from customers, after the date that the Receiver delegated responsibility for operating the small water systems and the right to their revenues to PSMCSD. The draft decision denies compensation for sewer, insurance premium, and county health department charges allegedly incurred after PSMCSD took over operations and paid by Alisal, because Alisal did not provide evidence of such charges and payments.

In its comments on the draft decision, Alisal asserted among other things that the draft decision erred in denying it compensation for the alleged sewer, insurance premium and county health department charges because it was never informed that it was required, or even permitted, to submit claims for reimbursement as a condition to recovering it. Alisal therefore asserted that the draft decision should be “corrected” to allow the Commission to “examine and resolve” these issues. By ruling dated January 12, 2006, the ALJ advised Alisal that the proper vehicle for requesting the opportunity to present further evidence is a motion to set aside submission of the record pursuant to Rule 84 of the Commission’s Rules of Practice and Procedure.¹

The ALJ accepted Alisal’s petition for filing on February 1, 2006,² and granted the Receiver’s request to file its reply 15 days after that date. The

¹ In its petition and in its reply to the Receiver’s response to the petition, Alisal repeatedly but erroneously asserts that the January 12, 2006, ruling finds that Alisal showed cause, in its comments on the draft decision, for presenting further evidence. The January 12 ruling merely instructs Alisal on the proper procedure for requesting the opportunity to do so. Today’s ruling addresses for the first time the merits of Alisal’s request to reopen the record, now that Alisal has met the procedural requirements for its consideration.

² The January 12, 2006, ruling directed Alisal to file this petition, if any, by no later than January 20, 2006. Alisal tendered the document for filing on that date, but failed to

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Receiver timely filed his reply on February 15, 2006. With authorization from the ALJ, Alisal filed a response on February 27, 2006.

2. Discussion

By this petition, Alisal seeks to offer:

- (1) additional evidence regarding the alleged property tax and telephone charges incurred after PSMCSD assumed operational responsibility for the small water systems and paid by Alisal;
- (2) evidence of charges for sewer service, county health department permits, and liability and property insurance incurred after PSMCSD assumed operational responsibility for the small water systems and paid by Alisal;
- (3) evidence of the Commission authorization for Alisal to recover, through a surcharge, DHS charges incurred in 2003, and the remaining amounts authorized to be recovered;
- (4) evidence of Alisal's advice letter request for the recovery of DHS charges incurred in 2004, which is currently pending before the Commission; and
- (5) evidence of main extension contract advances owed by Alisal to developers.

As grounds justifying this petition, Alisal claims that it did not know, until the draft decision issued, that it might be entitled to reimbursement for costs that were incurred after operational responsibility was transferred from Alisal to PSMCSD.

comply with the filing and service requirements of Article 2 of the Rules of Practice and Procedure. The ALJ directed Alisal to file a request for acceptance of late-filing of the document by no later than January 25, 2006, which the Receiver opposed. The ALJ granted Alisal's request by electronic mail on February 1, 2006.

We reject Alisal's claim. Alisal had every opportunity to raise this as an issue in its protest, at the prehearing conference, in its brief on the scope of the proceeding and need for hearing, and in its briefs on the record. Indeed, Alisal did present some evidence on the issue, through declaration, in its briefs on the record – albeit in support of its argument on the issue of PSMCSD's fitness. The fact that the draft decision relies on this evidence to recommend compensation to Alisal does not relieve Alisal of its burden of raising its claims and presenting evidence in their support in a timely manner.

Notwithstanding Alisal's procedural failures, we will nevertheless set aside submission in the interest of providing the Commission with a more complete record on the issue. Specifically, we will set aside submission to take evidence on the alleged telephone, property taxes, sewer, county health department permit, and insurance charges incurred after PSMCSD assumed operational responsibility for the small water systems.

We deny the petition with respect to future DHS surcharge revenues that Alisal might collect if it continued to own and operate the small water systems, and the liability for contract advances Alisal received for main extensions constructed before PSMCSD assumed operational responsibility. Alisal does not assert or show that the costs associated with these revenues and liabilities were incurred after PSMSCD assumed operational responsibility for the small water systems, or offer any other justification for setting aside submission to consider this evidence.

The Receiver opposes the consideration of evidence of the alleged telephone, property taxes, sewer, county health department permit, and insurance charges on the basis that the proffered evidence does not prove either that the alleged charges were associated with the small water systems or that

Alisal has paid them. The Receiver also suggests that there is no basis for Alisal to have incurred the telephone or insurance charges after operational responsibility was transferred to PSMCSD. These objections go to the weight of the evidence and merits of Alisal's claim, not its admissibility or the merits of the petition on these subjects. The Receiver will be afforded the opportunity to test the evidence under cross-examination, offer rebuttal testimony, and argue these challenges in brief. We note that granting Alisal's petition may, as a result, lead to the deletion from the draft decision of the condition that the Receiver reimburse for Alisal for property tax and telephone charges.

3. Next Steps

Evidentiary hearing is set for Wednesday, March 29, 2006, at 9:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, to take the additional evidence regarding property taxes, telephone charges, sewer charges, county health department permit charges, and insurance charges, as discussed above.

Alisal may present a competent witness or witnesses to offer testimony and sponsor any supporting exhibits on these subjects. The Receiver may present a rebuttal witness or witnesses to offer testimony and sponsor any supporting exhibits.

Alisal and the Receiver shall serve notice of the name of any witness and advance copies of any exhibits intended to be offered into evidence, either through direct testimony or upon cross-examination, by no later than Wednesday, March 22, 2006. Any exhibits offered into evidence shall comply with Rules 70 and 71 of the Commission's Rules of Practice and Procedure.

The parties are advised that the submission of this record is set aside for the limited purpose of taking evidence and briefing on the issue of whether the

transfer of the small water systems should be conditioned on the Receiver's payment, either to Alisal or to the charging entity as applicable, of the property taxes, telephone charges, sewer charges, county health department permit charges, and insurance premiums identified in this ruling. Argument on other issues will be accorded no weight.

4. Ex Parte Communications

Pursuant to Rule 6.6 and the determination in the July 18, 2005, scoping ruling that evidentiary hearing were not needed in this proceeding, ex parte communications have, until this time, been permitted without restrictions or reporting requirements. Because we now determine that an evidentiary hearing is needed, we direct parties to comply with the restrictions and reporting requirements of Rules 7 and 7.1 with respect to any further ex parte communications.

5. Presiding Officer

Pursuant to Rule 6(a)(3), Assigned Commissioner Grueneich designates ALJ Yacknin as the presiding officer.

IT IS RULED that:

1. The petition of Alisal Water Corporation to set aside submission is granted in part and denied in part, as set forth in this ruling.
2. Parties shall serve notice of the name of any witness, and advance copies of any exhibits intended to be offered into evidence, either through direct testimony or upon cross-examination, on all parties by no later than Wednesday, March 22, 2006.
3. The Commission will hold an evidentiary hearing on Wednesday, March 29, 2006, at 9:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

4. The restrictions and reporting requirements of Rules 7 and 7.1 shall now apply to ex parte communications regarding this proceeding.

5. Administrative Law Judge Yacknin is the presiding officer in the proceeding.

Dated March 7, 2006, at San Francisco, California.

/s/ DIAN GRUENEICH

Dian Grueneich
Assigned Commissioner

/s/ HALLIE YACKNIN

Hallie Yacknin
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner and Administrative Law Judge's Modified Scoping Ruling Granting in Part Petition to Set Aside Submission and Setting Evidentiary Hearing on all parties of record in this proceeding or their attorneys of record.

Dated March 7, 2006, at San Francisco, California.

/s/ ELVIRA T. NIZ

Elvira T. Niz

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.